

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
Southern Division

In re

DON WILLIAMS CONSTRUCTION CO.,  
INC.

Bankruptcy Case  
No. 91-13102

DONALD CLOWERS & SHARON CLOWERS

Adversary Proceeding  
No. 94-1146

Plaintiffs

V.

JERRY FARINASH, Trustee  
In Bankruptcy, and  
FIRST TENNESSEE BANK, N.A.

Defendants

**MEMORANDUM**

Appearances: Harry Weill, Weill & Weill, Chattanooga, Tennessee,  
Attorney for Plaintiffs

Richard B. Gossett, Baker, Donelson, Bearman, Adams  
& Caldwell, Chattanooga, Tennessee, Attorney for  
First Tennessee Bank

Jerry Farinash, Kennedy, Fulton & Koontz,  
Chattanooga, Tennessee, Attorney for Trustee

R. Thomas Stinnett, United States Bankruptcy Judge

The plaintiffs' complaint is essentially the same as the complaint of Mr. and Mrs. White ("the Whites") in adversary proceeding number 94-1081. The plaintiffs allege that they bought and paid for a subdivision lot from the debtor, Don Williams Construction Co., Inc. The debtor gave plaintiffs a warranty deed but never paid First Tennessee Bank ("Bank") to have the development mortgage released. The plaintiffs have brought suit against the Bank and the bankruptcy trustee. They argue that the Bank should be required to release the mortgage or that the Bank is estopped to enforce it. In the alternative, they ask the court to determine how much plaintiffs must pay the Bank to have the mortgage released. Only one prayer for relief concerns the trustee. It asks the court to determine the proper amount of the plaintiffs' claim in the bankruptcy case for the purposes of payment by the trustee.

The Bank has filed a motion to dismiss for lack of subject matter jurisdiction or to abstain if the court does have subject matter jurisdiction. In the adversary proceeding brought by the Whites, the court determined it lacked subject matter jurisdiction but even if jurisdiction existed, it would abstain. The court adopts its memorandum in the Whites' adversary proceeding as its memorandum in this proceeding. A copy is attached and is hereby incorporated into this memorandum.

This memorandum is the court's findings of fact and conclusions of law. FED. R. BANKR. P. 7052. The court will enter an order.

At Chattanooga, Tennessee.

BY THE COURT

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R. Thomas Stinnett  
U. S. Bankruptcy Judge

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**ORDER**

For the reasons stated in a Memorandum Opinion filed  
contemporaneously herewith,

It is ORDERED that the motion of First Tennessee Bank is  
sustained and this adversary proceeding is dismissed.

ENTER:

BY THE COURT

entered 1/13/1995

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE